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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	File No. IB 98-118
Review of International Common Carrier	)	
Regulations	)	

REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits its Reply Comments in response to the Commission's Notice of Proposed Rulemaking[1] concerning its proposals to streamline the international Section 214 application rules.

While supporting a blanket Section 214 authorization for virtually all applications to serve unaffiliated routes, AT&T believes that special concerns are raised by a small category of these applications, those involving substantial dominant carrier investments below 25 percent, which should remain subject to existing procedures. Similarly, the Commission should retain the existing notification requirements for the above 10 percent dominant carrier investments and amend its rules to require the notification of all above 10 percent dominant carrier investments.

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[1] *Notice of Proposed Rulemaking*, IB Docket No. 98-118 (rel. Jul. 14, 1998), FCC 98-149. In addition to AT&T, Comments were filed by Ameritech, Bell Atlantic, the Competitive Telecommunications Association, Deutsche Telekom AG ("DT"), Excel telecommunications, Inc., the Federal Bureau of Investigation ("FBI"), GTE Service Corporation ("GTE"), Iridium U.S., L.P., MCI telecommunications Corp. ("MCI"), the Personal Communications Industry Association ("PCIA"), Qwest Communications Corp., SBC Communications, Inc. ("SBC"), Sprint Communications Company L.P.. and Tyco Submarine Systems Ltd.

AT&T also supports a blanket authorization for some applications to serve affiliated routes -- where the foreign affiliate does not own wireline facilities, or is a reseller -- but believes that the Commission should not further extend the blanket authorization until it has further experience with the operation of these rules in the U.S. international market. AT&T approves the other streamlining proposals as set forth in the Notice, including authorizing switched services over international private lines by declaratory ruling. AT&T also supports the permissive de-tariffing of international services, except for carriers on routes on which they are affiliated with carriers with market power in the foreign market, where tariff filing obligations remain necessary to prevent competitive distortion.

I. NO BLANKET AUTHORIZATION SHOULD APPLY TO APPLICATIONS INVOLVING DOMINANT FOREIGN CARRIER INTERESTS OF 10 PERCENT AND ABOVE.

AT&T concurs that, with respect to competitive issues, the large majority of Section 214 applications to serve unaffiliated international routes do not raise concern and should be subject to the blanket authorization proposed by the Notice.[2] Thus, where there is no equity relationship between the applicant and any carrier at the foreign end of the route, or in the case of equity interests below 25 percent involving a carrier without foreign market power in the foreign market, the pre-entry review of competitive issues need not be required. But different considerations apply to applications involving substantial investments in or by carriers with foreign market power, even where the 25 percent affiliation thresholds are not triggered.

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[2] AT&T defers to the views of the responsible Executive Branch agencies regarding the extent to which other public interest concerns may require greater scrutiny of Section 214 applications.

Contrary to the assumptions by some commentors, there has been no meaningful change in competitive conditions in most foreign markets as the result of the WTO Basic Telecommunications Agreement. As MCI recognizes (p. 10), dominant foreign carrier investments below 25 percent continue to require scrutiny under the *Foreign Participation Order* where there is a significant potential impact on competition. Similarly, substantial below 25 percent investments affecting competition constitute affiliations under the Commission rules. At this relatively early stage in the global liberalization process, it is much too soon to conclude that no below 25 percent investment in a U.S. carrier by a foreign monopolist will again give rise to significant competitive concerns.

To ensure adequate public interest review of substantial dominant carrier investments below 25 percent that may adversely affect competition, applications involving such investments should remain subject to existing procedures. Although only a limited number of Section 214 applications are likely to fall into this category, significant harm to the public interest may result if the concerns they may raise are overlooked. Where those applications are to serve routes to non-WTO Member countries, and foreign markets are closed, denial is still required under the ECO test. Additionally, where there is a very high risk of competitive harm, the denial or conditioning of applications to serve routes to WTO Member countries is required. After-the-fact notification through post-licensing filings, as proposed by the Notice, even if required within a brief interval, would eliminate all pre-entry review and may further constrict the Commission's public interest review by effectively foreclosing denial of these applications and impeding the imposition of other conditions.

For these reasons, as AT&T has demonstrated, no blanket authorization should apply to applications involving dominant carrier investments of 10 percent or above, which is the

most appropriate threshold to identify equity interests triggering potential competitive concerns. The same concerns require the retention of the above 10 percent notification requirements for dominant carrier investments. As MCI describes (p. 10), the removal of these requirements, as proposed by the Notice, would eviscerate all review of the competitive issues they may raise.

Similarly, the Commission should amend its notification rules to require the notification of all 10 percent and above dominant foreign carrier investments in, or by, holders of existing Section 214 authorizations. *See* AT&T, pp. 10-13. Furthermore, notification should be required if an otherwise *pro-forma* assignment of a Section 214 authorization and transfer of control of an entity holding such an authorization results in an acquisition by a dominant foreign carrier of more than 10 percent of a U.S. carrier.

In some cases, less burdensome alternatives may be available. For example, the submission to the Commission of a copy of a Hart-Scott-Rodino filing could substitute for separate notification of above 10 percent dominant carrier investments involving existing Section 214 holders, provided that the Commission then gave public notice of the investment. Where such alternatives do not exist, however, the Commission should use its established application and notification procedures.

II. A BLANKET AUTHORIZATION SHOULD ALSO APPLY TO APPLICATIONS TO SERVE SOME AFFILIATED ROUTES.

The same considerations should allow the blanket authorization of applications to serve some affiliated international routes. As proposed by several commentors, applications to serve affiliated routes where the affiliate in the foreign market does not own wireline facilities at the foreign end of the international route, or provides service only as a reseller, should not require the pre-entry review of competitive issues. AT&T believes, however, that the Commission should not broaden further the scope of the blanket authorization at the present time. It should rather

take an incremental approach and limit the streamlining on affiliated routes to the categories above until it is possible to assess the operation of these new rules in the U.S. international market. AT&T would be concerned, for example, if a blanket authorization led some carriers to take a less serious view of compliance with notification procedures, as noted by the FBI (p. 6, n.12). Any decision on whether to extend the blanket authorization to applications to serve other affiliated routes -- such as where the affiliate in the foreign market has been found to lack market power[3] -- should await this further evaluation.[4]

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[3] There should also be no question of removing existing procedures for applications to provide service on affiliated routes where there has been no finding that the affiliate is without market power. The claim by DT that the blanket authorization should apply to all carriers ignores the competitive concerns that may be raised by such applications that require close scrutiny under the standards applicable to WTO Member or non-WTO Member countries to determine whether denial or the attachment of benchmark conditions, dominant carrier regulation or other conditions may be warranted. Thus, contrary to the proposal by GTE (p. 3), no blanket authorization should apply merely on the basis of compliance with WTO commitments, compliance with settlement rate benchmarks, or the resale of the facilities of an unaffiliated carrier. None of these circumstances preclude the competitive concerns that may be raised by applications involving affiliations with dominant foreign carriers and that require the continued use of existing application procedures. DT's further argument that dominant carrier safeguards should be removed once benchmarks are met ignores the continued wide margin between benchmarks and the cost of termination and the non-price discrimination that is addressed by the dominant carrier rules.

[4] CMRS providers should be subject to the same blanket Section 214 authorization as other carriers. However, as the Commission has previously concluded, there is no basis for the forbearance from Section 214 requirements for CMRS providers (particularly in view of the even lesser burden that a blanket authorization would entail), contrary to the arguments by some commentors. *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, WT Docket 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, (rel. Jul. 2, 1998) ("*Broadband PCS Forbearance Order*"), ¶¶ 50-53. The Commission found the Section 214 authorization requirement "important to the Commission's efforts to monitor and enforce compliance with its safeguards," and that it "also serves to inform small carriers of their special obligations as providers of international services." *Id.*, ¶ 50. Foreign affiliations by CMRS providers certainly present the same potential competitive concerns as those by other carriers and should be treated on the same

(footnote continued on next page)

III. OTHER PROPOSALS.

AT&T approves the proposals to allow holders of Section 214 global facilities-based authorizations to use non-U.S.-licensed submarine cable systems without specific approval, to eliminate the need for separate Section 214 authorization when applying for a common carrier submarine landing license, and to reorganize Part 63 of the Commission's rules. AT&T supports the proposed forbearance from *pro-forma* assignments and transfers of control, provided that, as noted above, notification is required when there is a resulting acquisition by a dominant foreign carrier of more than 10 percent of a U.S. carrier. AT&T comments below on the proposals to allow switched services over international private lines by declaratory ruling, to allow Section 214 holders to provide service through wholly-owned subsidiaries, and the permissive forbearance from international tariffing requirements proposed by SBC.

1. Switched Services Over International Private Lines Should be Authorized by Petitions for Declaratory Ruling.

AT&T supports the proposal that U.S. carriers should be permitted to provide switched services over international private lines to particular countries by filing a petition for declaratory ruling. This change would simplify and streamline existing procedures, which require a Section 214 application. The Commission should not, however, take the further step suggested

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basis. *See, id.*, ¶ 51. In particular, there is no basis to the claim by PCIA (pp. 10-13) that different treatment is warranted for the provision of switched resale services by CMRS providers that are affiliated with foreign carriers. No switched resale carrier "negotiat[es] access" to the foreign market (*id.*, p. 12), but the Commission nonetheless relied as a safeguard on "easier detection" that would enable it "to monitor the market and take action, including imposing additional authorization conditions, to prevent anticompetitive behavior if necessary." *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, (rel. Nov. 26, 1997), FCC 97-398 ("*Foreign Participation Order*"), ¶ 205.

by MCI (pp. 8-9) and issue a blanket authorization to provide switched services over international private lines to any WTO Member country where at least 50 percent of the settled traffic is at or below the benchmark rate. Because of the distinct concerns that are raised by these services as a result of the potential one-way by-pass of the settlements process, they should continue to be authorized on a country-specific basis when it is clear that the Commission's requirements are met.

2. The Provision of Service by Wholly Owned Subsidiaries Should Not Include Service by "Sister" Subsidiaries.

AT&T supports the proposed amendment of Section 63.21 to allow Section 214 holders to provide service through wholly-owned subsidiaries. AT&T would be concerned, however, by any extension of this amendment to include "sister" subsidiaries for U.S. subsidiaries of foreign carriers, or partnerships in which U.S. carriers have controlling interests. *See* MCI, pp. 5-6, GTE p. 5. These proposals would potentially extend Section 214 authorizations to large numbers of foreign carriers in different countries without any review of the separate issues that may be raised by their authorization.

3. The Commission Should Allow the Permissive De-Tariffing of International Services Subject to Safeguards to Prevent Competitive Distortion.

SBC (pp. 9-12) requests the Commission to adopt the permissive de-tariffing of international services or to issue a Further Notice addressing this issue. AT&T agrees that the removal of the obligation to file international tariffs would provide many competitive benefits. AT&T also concurs that the Commission should adopt permissive rather than complete de-tariffing, as in some instances tariffs provide greater efficiencies and lower costs. AT&T does not agree, however, with SBC's contention (pp. 10-11) that the preservation of the tariff filing obligation as part of the Commission's dominant carrier regulations is all that is necessary to

address potential competitive concerns. As described below, the tariff filing obligation should apply to all carriers on routes on which they are affiliated with carriers with market power in any foreign market where settlement rates exceed the "best practices" rate.

Although the Commission's benchmark safeguards against market-distorting price squeeze behavior presently apply to all facilities-based carriers providing service on affiliated routes, AT&T believes that these safeguards are necessary only where the affiliate has market power in the foreign market. These safeguards place primary reliance on tariffed collection rates to determine whether price-squeeze behavior has occurred. They apply "a rebuttable presumption that a carrier has engaged in price squeeze behavior that creates distortions in the U.S. market for IMTS if the conditions of [the Commission's] bright line test are met."[5] The Commission's "bright line test" is "whether any of a carrier's tariffed collection rates on an affiliated route are less than the carrier's average variable costs on the route."[6] Thus, to maintain this critical safeguard against price squeezes by dominant foreign carriers, the Commission should not allow de-tariffing where a U.S. facilities-based carrier is affiliated with a carrier which processes market power in a foreign market where settlement rates exceed the "best practices" rate. As the Commission found in considering a similar issue in the *Broadband PCS Forbearance Order*, "our ability to detect and deter certain kinds of anticompetitive practices on affiliated routes depends on the availability of tariffed rates on those routes."[7]

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5 *International Settlement Rates*, 12 FCC Rcd. 19806, 19908 (1997) ("*International Settlement Rate Order*"). Enforcement action where this presumption is met may include requiring 'best practice" settlement rates or revocation of the authorization to serve the affiliated market. *Id.*

6 *Id.*

7 *Broadband PCS Forbearance Order*, ¶ 60.

This restriction on international de-tariffing should also apply to switched resale carriers where they are affiliated with a foreign carrier that has market power at the foreign end of the route where settlement rates exceed the best practices rate. In the *Foreign Participation Order*, the Commission declined to apply the benchmark condition for service to affiliated markets to switched resale services based in significant part on its finding that "detection of an attempted predatory price squeeze by a switched reseller is easier than by a facilities-based carrier."[8] This was because "the Commission, antitrust authorities, and, potentially, the underlying facilities-based carrier, will be able to detect if a switched reseller attempts to price below the level of the wholesale rate at which it takes service."[9] Indeed, "any price for switched resale service that is below the level of the wholesale tariff at which the switched reseller takes service would be suspect."[10]

As switched resellers are not necessarily regulated as dominant on routes where they are affiliated with a foreign carrier with market power, the filing of tariffs by these carriers will continue to be necessary, following any adoption of international de-tariffing, in order to ensure that below-cost pricing may still be detected. The Commission recently confirmed in the *Broadband PCS Forbearance Order* that it "would monitor the switched resale market carefully for evidence of anticompetitive behavior."[11] The Commission should therefore prohibit de-tariffing by switched resale carriers on routes where they are affiliated with a foreign carrier with market power and where settlement rates exceed the best practices rate..

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8 *Foreign Participation Order*, ¶ 204.

9 *Id.*

10 *Id.*

CONCLUSION

For the reasons explained above and in AT&T's Comments, AT&T requests the Commission to continue existing Section 214 procedures for applications involving dominant carrier investments of 10 percent or above. The Commission should also retain its existing notification requirements for 10 percent or greater shareholders, and require advance notification for 10 percent or greater dominant foreign carrier investments. Other than on routes where the foreign affiliate does not own wireline facilities, or is a reseller, the Commission should not further extend the blanket authorization at the present time. AT&T approves the other streamlining proposals as set forth in the Notice and supports the permissive de-tariffing of international services, except in the case of affiliations with dominant carriers, where tariff filing obligations remain necessary to prevent competitive distortion.

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CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 28th day of August, 1998 a copy of the foregoing " Reply Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, upon the parties on the attached service list.

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